IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2383 OF 2006

Krushna Dinkar Arjun .. Applicant.
Vs.
Bahusaheb Sopan Arjun & Ors. .. Respondents.

Mr.P.R.Arjunwadkar for the applicant.
Mrs.M.H.Mhatre A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 31ST JULY, 2006

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. This application is filed under section 378 of the Code of Criminal Procedure seeking leave to appeal against the judgment and order of acquittal of all the 25 respondent-accused, who were charged and tried for the offence punishable under section 143, 441, 427, 452, 504, 506 read with 149 of I.P.C. The trial Court after appreciating the evidence led by the complainant in the form of three witnesses only, in paragraph 8 of the judgment, made the following observations:

> "8. In order to support his version complainant has examined his brother Bhagwan as CW 2 and his wife as CW 3. PW 2 Bhagwan supported the version of complainant and narrated the incident but complainant witness

> CW 3 wife of Bhagwan has not stated the second incident. To support his version the complainant has failed to examine any independent witness. The complainant has also failed to examine any police witness. Admittedly, these three witnesses belongs to same family and according to Complainant and his brother two times Accused person gathered and manhandled to him but according to witness Subhadra second incident had not taken placed. And while recording the evidence before the Court, Complainant unable to state names to all Accused. Admittedly, there is enemical terms between parties in respect of that house. Evidence of the Complainant and his witness found stereo type because they plainly stated before Court all 25 Accused gathered on spot and unauthorisedly entered in their house broken latches of door. Besides it, complainant has also not brought on record the said house belongs to him and Accused person were restraining him from going in it as well as unauthorisedly entered in his house. It has also come on record there is enemical terms on account of that house. Considering their relations and evidence lead by the Complainant before the Court, doubts creates in my mind whether such types of incident had taken place or not ? and when there is about definitely its benefit goes in favour of the Accused. Besides, it as per notice of criminal law, Complainant ought to have prove his case beyond reasonable doubt in such circumstance according to me, Complainant has failed to prove on the relevant day Accused persons formed an unlawful assembly and entered in the house of Complainant and assaulted him and restrained him from entering in the house and hence, I answer all these points in the negative".

3. I have also perused the deposition of P.W.1. It is clear from the aforesaid observations and the deposition of P.W.1 that there was no consistency in the evidence of the complainant and his wife. Having considered that the trial Court has rightly held that

the complainant ought to have examined an independent witness/es and having failed to do so has rightly disbelieved the deposition of all the three witnesses. Moreover, the complainant could not give names of all the accused in the Court. Furthermore, nothing was brought on record to show that the house in question was belonging to the complainant and that the accused restrained him from entering the same. The findings recorded by the court below, on appreciation of the evidence on record, cannot be said to be perverse and unreasonable. The view taken by the trial Court is reasonably possible view. In the circumstances I am not inclined to interfere with the instant application. The application is, accordingly, rejected.

(D.B.Bhosale, J.)